

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of:)

The Bell Operating Companies' Tariff
for the 800 Service Management
System, Tariff F.C.C. No. 1)

and)

800 Data Base Access Tariffs)

Transmittal No. 1

CC Docket 93-129

OPPOSITION TO EMERGENCY APPLICATION FOR REVIEW

MCI Telecommunications Corporation (MCI) respectfully requests that the Commission deny the Emergency Application for Review filed by the United Telephone Companies (United) of the 800 Database Tariff Order in the proceeding below, which partially disallows United's proposed 800 database access rate (to the extent that the rate exceeds .67 cents) and suspends the remaining rate, subject to an accounting order, for the full statutory period.^{1/}

United claims that the Bureau's action is "arbitrary, capricious and unlawful,"^{2/} and requests that the Commission review its action on an emergency, expedited basis.^{3/} United asserts that the Bureau acted unreasonably in suspending a portion of United's rates without first conducting an investigation.^{4/} Further, United asserts that the action

^{1/} In the Matter of the Bell Operating Companies' Tariff for the 800 Service Management System Tariff F.C.C. No. 1 and 800 Data Base Access Tariffs, Order, CC Docket 93-129, DA 93-491, released April 28, 1993 (800 Database Tariff Order).

^{2/} United at 1.

^{3/} Id. at 2.

^{4/} Id. at 2, 4.

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is arbitrary in that it prevents United from being compensated through the .67 cent rate for "all of its costs " . . . unreasonably [sic] incurred to provide 800 database access service,"^{5/} and that United must, therefore, ". . . recover these costs through other services. . ."^{6/} resulting in ". . . the cost causer not fully paying the costs of 800 database access service."^{7/} These arguments are unpersuasive.

United's allegation, that it is beyond the Bureau's authority to suspend and investigate a portion of a carrier's rates, is simply incorrect. In fact, the Bureau relied upon Section 204,^{8/} which provides the Commission and the Bureau with far more flexibility than United seems to realize and allows the partial rate authorization in the 800 Database Tariff Order.

Section 204 never required the Bureau to "engage in a pointless charade in which carriers . . . are required to submit and resubmit tariffs until one finally goes below an undisclosed maximum point of reasonableness and is allowed to take effect."^{9/} An example of the Commission's use of Section 204(a) occurred in 1975, when the Commission was investigating the proper prospective rate of return for AT&T. The Commission permitted AT&T to increase its rate of return and its rates only to the level

^{5/} Id. at 2.

^{6/} Id.

^{7/} Id.

^{8/} 800 Database Tariff Order at para. 19.

^{9/} Direct Marketing Ass'n Inc. v. FCC, 772 F. 2d 966, 969 (D.C. Cir. 1985) (quoting Trans Alaska Pipeline Rate Cases, 436 U.S. 631, 653 (1978)).

of an approved interim rate of return, pending the investigation into the appropriate prospective rate of return.^{10/}

Thus, under 204(a), the Commission was able to allow into effect less than the full charges proposed in the carrier's filing, without entering a prescription. Additionally, the Commission could do so subject to its investigation of the reasonableness of the remaining proposed rate. The 800 Database Tariff Order should be upheld under these standards.

United's additional claim, that the Bureau's actions will result in United recovering less than its costs for 800 database query charges, is equally unconvincing. The burden of supporting filed rates rests with the carrier filing the rates.^{11/} Further, the Commission only narrowly determined that it was appropriate to grant any exogenous treatment of costs whatsoever, as 800 database access is a restructured service.^{12/} Thus, the Commission warned the carriers that it would be conducting an even more strict review of the 800 database costs to assure that they were reasonable.^{13/} Nevertheless, although United claims that it had the best cost support offered by any

^{10/} AT&T, 51 FCC 2d 619, 627 (1975).

^{11/} See, e.g., Investigation of Access and Divestiture Related Tariffs, CC Docket Nos. 78-72 and 83-1145, Memorandum Opinion and Order, FCC 84-201, released May 10, 1984, paras. 13-14, 54.

^{12/} 800 Access Order at para. 26.

^{13/} Id. at 27.

LEC,^{14/} United failed to explain several of the assumptions and cost allocations supporting its rates.^{15/}

The other LECs' proposed tariff rates may be overstated as well, as the Bureau decided that they raised substantial questions of lawfulness with respect to cost allocations and resulting rate levels.^{16/} Without the requisite support from the LECs, the Bureau had no alternative but to suspend and investigate the LECs' rates.^{17/} Although the Bureau allowed many of the other possibly overstated rates to go into effect on one day's suspension, it determined that it needed to establish a bound of reasonableness on the amount that carriers could charge, in order to protect the interests of customers. Thus, the Bureau ordered the partial suspension of United's rates in the 800 Database Tariff Order based on the reasonable determination that the costs for 800 database should be similar for all carriers owning their own SCPs "since all LECs are deploying similar data base systems."^{18/}

^{14/} United at 3. United implies that MCI was satisfied with United's cost support, as MCI requested that the Commission require a similar format for all LECs. However, MCI expressed considerable concerns with respect to United's costs, particularly with respect to the inclusion of overhead expenses as an exogenous cost. See, In the Matter of Provision of Access for 800 Service, Ameritech Operating Cos., Tariff FCC No. 2, Transmittal No. 698, et. al., MCI Petition for Rejection and Suspension and Investigation, filed March 18, 1993 (MCI Petition).

^{15/} 800 Database Tariff Order at para. 16. See, e.g., MCI Petition. See, also, Petitions filed by Allnet Communications Services, Inc., AT&T, Ad Hoc Telecommunications Users Committee, Aeronautical Radio, Inc., CompuServe, Inc., California Bankers Clearing House Association, Mastercard International Incorporated, the New York Clearing House Association, and Visa, U.S.A. Inc., First Financial Management Corporation, National Data Corporation, Sprint Communications Company L.P. and International Communications Association against Ameritech Operating Cos., Tariff No. 2, Transmittal No. 698, et. al., filed March 18, 1993.

^{16/} 800 Database Tariff Order at para. 16.

^{17/} Id.

^{18/} Id. at para. 19.

Using the mean rate as a benchmark, with a margin for error of one standard deviation, to evaluate LEC proposed rates was a logical method of assessing the preliminary reasonableness of United's proposed rate.^{19/} The Commission has consistently and reasonably used statistical validation methods in the past for its Annual Access Filing review.^{20/} Additionally, the Commission's review of United's cost support revealed that United inappropriately included overhead expenses as exogenous costs in developing its proposed rate.^{21/}

United maintains that its own analysis of demand and its cost comparisons indicate that United's proposed rate would be cost based.^{22/} Thus, United claims that there must have been an error in the assumptions underlying the Bureau's statistical analysis, i.e. that rates should be similar "since all LECs are deploying similar data base systems."^{23/} However, United's analysis is self-serving. The Commission should not substitute United's preferred measurements and benchmarks to assess the reasonableness of its rates, and the Bureau's order cannot be considered "arbitrary" simply because it used one reasonable set of criteria for its preliminary review that is not preferred by the carriers that are identified as having filed excessive rates.

^{19/} Id.

^{20/} See Annual 1988 Access Filings, 3 FCC Rcd. 1281 (1987), Annual 1989 Access Tariff Filings, 4 FCC Rcd 3638 (Com.Car. Bur. 1989).

^{21/} 800 Database Tariff Order at para. 17.

^{22/} United at 3-7.

^{23/} United at 4-7.

Moreover, the Commission found that United had included some costs not clearly allowable for the 800 database query charge. The Bureau has the prerogative of suspending rates in the interest of protecting ratepayers, and was clearly justified in doing so with respect to the portion of United's rate that did not appear reasonable. In fact, protecting the ratepayer from unreasonable rates may be even more crucial, in this instance, to facilitate fledgling competition in the 800 market. Thus, United's allegation that the Bureau failed to properly analyze its cost support and, thus, unreasonably suspended its 800 database query charge, is simply unfounded. To the contrary, based on the Bureau's preliminary analysis, a partial suspension was required to protect the public interest.

Finally, United asserts that it has remained financially whole by recovering costs from users of other access services,^{24/} i.e, United asserts that it raised rates for services in other baskets to avoid underrecovery of costs for the 800 database query charge. However, this argument is based on a premise, clearly rejected by the Bureau, that United is underrecovering for its costs. In fact, United has failed to justify the costs underlying its 800 database rates. Thus, there can be no cross-subsidization. In making its decision to partially suspend United's proposed rate, the Bureau appropriately relied upon the overpricing of the 800 database query charge and the harm that would result to ratepayers if the unreasonable rate was allowed to go into effect.

United's ability to raise other rates when it is under its price cap, without any supportable underlying costs, may be an indictment of the price cap system, but it has

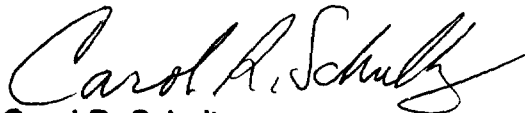
^{24/} United at 2, 7.

absolutely no bearing on the reasonableness of the Commission's suspension of United's 800 database query charge.^{25/}

CONCLUSION

The Bureau acted reasonably and in the public interest by partially suspending United's apparently unreasonable 800 database query rate pending a full investigation. United has failed to demonstrate any need for the Commission to substitute United's review for the analysis conducted by the Bureau in the 800 Database Tariff Order. Thus, MCI respectfully requests that the Commission uphold the 800 Database Tariff Order, and deny United's Emergency Application for Review.

Respectfully Submitted,
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Dated: May 18, 1993

^{25/} As a result of the price cap flexibility, United admits that there is no possibility that it will come to any financial harm from the Bureau's 800 Database Tariff Order.

CERTIFICATE OF SERVICE

I, Susan Travis, do hereby certify that copies of the foregoing MCI Opposition to Application for Review were sent via first class mail, postage paid, to the following on this 18th day of May, 1993:


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